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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,614	08/28/2003	Stephen P. Craig	21591	5281
7590	06/02/2005		EXAMINER	
Paul M. Craig, Jr. 207 Quaint Acres Drive Silver Spring, MD 20904				ALIMENTI, SUSAN C
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/649,614	CRAIG, STEPHEN P.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Susan C. Alimenti	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 February 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-11 and 13-19 is/are rejected.  
 7) Claim(s) 12 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Response to Arguments***

1. In view of the Appeal Brief filed on 2/23/05, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Objections***

2. Claim 13 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. The phrase in claim 1, "a number of pegs and holes," limits the claim to at least two pegs and holes, therefore, the phrase in claim 13 wherein the number ...is at least two" fails to further limit claim 1.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11 recites the limitation "the channel" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-11 and 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beerens (US 5,098,328), and further in view of Lemkin et al. (US 3,670,449).

Beerens discloses the claimed invention capable of being placed between a plant pot and the supporting surface which is adapted to be assembled into a predetermined configuration which may depend on the size of the pot, except he does not positively disclose the material it is made from. Beerens' device comprises a plurality of slat-like members defined as two or three cubes 1 coupled together. When at least two cubes 1 are coupled together to form a slat-like member (See Figure 3) the member includes a number of pegs 27, 28 and holes 31, 32. The pegs on a first side of the slat-like member correspond to a number of similarly disposed holes on

another side of the slat-like member. Further, a number of pegs and holes are symmetrically disposed across a line drawn transverse the center plane, or along the side connecting the two blocks 1 forming the slat-like member. This symmetry allows laterally adjacent slat-like members to be rotated and yet still connectable, concealing the pegs in thereof.

Regarding making the device by plastic injection molding, Lemkin et al. teaches that “[b]lock type elements generally can be easily formed by injection molding of plastic materials.” (Lemkin, col.1, lns.19-20) It would have been obvious to one having ordinary skill in the art at the time the invention was made to chose injection molded plastic as the preferred construction material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claims 3-5, depression 2 in Beerens’ device forms a moisture retaining means in the top surface of the slat-like member and it is substantially symmetrically shaped.

Regarding claims 4, and 6, the bottom surface of depression 6 (See examiner’s reference character in Figure 1) on the corner of the cube member 1 is shaped resembling a triangle.

Regarding claims 4, and 7, depression 2 has a curvilinear shape on the surface surrounding the sides of the peg disposed therein.

Regarding claims 8-11, 17, and 18, portions 7 (See examiner’s reference character in Figure 1) slants downward toward one end, and when multiple cubes, for example four cubes, are placed together to form a slat-like member depression 2 extends diagonally across the top surface of several cubes, therefore, extending across *substantially* the entire length of a slat-like member and is considered to be closed by slanted side 7.

Regarding claims 15, and 19, the length of the pegs is smaller than the width of the slat-like member.

Regarding claim 16, as can be seen from Figure 4 of Beerens, the depth of the holes is smaller than the width of the slat like member.

***Allowable Subject Matter***

7. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harvey Behrend can be reached on 571-272-6871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3644

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA

  
PETER M. POON  
SUPERVISORY PATENT EXAMINER

5/31/05